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Subject: Policies and Procedures for Making Entry to an Occupied Residential Dwelling for Purposes of an Administrative Inspection

Purpose: The purpose of this bulletin is to implement changes to the existing practices for gaining consent to enter residential dwellings for purposes of inspections initially implemented in 1999. The bulletin will implement changes mandated by a federal consent decree.

GENERAL CONSIDERATIONS:

- The right to refuse an inspection is a constitutionally guaranteed right. All staff when faced with a question as to whether or not consent is needed, should immediately consult a manager. Staff should always assume consent is needed for any interior inspection for an occupied residential dwelling.
- Proper consent is essential to providing the proper foundation upon which to uphold orders to correct certain conditions that violate the law.
- **No exceptions to these protocols shall be effective unless specifically set out below.** If at any time, ISD seeks to change the protocols set out in this bulletin, such changes **MUST** be approved by stipulation between the parties in Sang Vo et. al. v. City of Boston (C.A. No 00-11733-RWZ) or after being granted leave from the Court.
- Failure to comply with the requirements of this bulletin may result in action pursuant to the graduated disciplinary process set out in each collective bargaining agreement starting with verbal counseling.
- This bulletin shall incorporate and **supersede** the existing consent to inspections policy embodied in Commissioner's Bulletin 99-05 relative to gaining consent; however the process for securing administrative warrants set out in Bulletin 99-05 shall remain in effect, unless otherwise changed by a subsequent bulletin.

DETERMINATIONS: ISD shall implement the following in its enforcement of the State Building Code, the Boston Zoning Code, the State Sanitary Code, the Lodging House Statute and all other laws and regulations.

1.0 ISD Staff Presenting Themselves for Entry and Making Entry

- 1.1 Initial attempt to gain access:** No more than two (2) ISD personnel shall present themselves at the doorway or threshold of any residential dwelling when initially attempting to gain consent to enter the dwelling for purposes of an inspection. Other ISD personnel on scene shall wait out of view of the occupants until consent or a warrant is secured.

1.2 Upon gaining access: Upon gaining access to a residential dwelling unit either through consent OR through an administrative search warrant, no more than **four (4)** ISD personnel shall enter the dwelling at any one time. **EXCEPTION FOR SECTION 1.2:** Conditions meeting the standards set forth in 780 CMR 121 "Unsafe and Dangerous".

1.2a Person charged with managing personnel on scene: At all times when there is a need for multiple ISD disciplines or personnel to be on scene, the manager on scene shall be charged with ensuring compliance with this section and proper rotation of staff in and out of a dwelling to effect a proper inspection and compliance with the requirements of this section. If no manager is on scene, the on-call manager or the appropriate ISD manager shall designate one person to maintain a proper head count.

2.0 Gaining Consent to Enter a dwelling

2.1 English speaking For all occupant requested and non-occupant requested inspections, unless exempted in Section 4.0 below, staff shall, upon coming to the threshold or doorway of any dwelling, execute the following steps:

1. Ensure department issued I.D. card is visible to the person answering the door
2. State your name and your purpose for being there
3. Determine if the person is an **occupant, above the age of 18 and speaks English** or if anyone present in the household at the time of the inspection meets those three (3) requirements. **IF NO ONE SPEAKS ENGLISH GO TO SECTION 2.2 BELOW.**
4. Inform the adult occupant of the need to sign a consent form **BEFORE** entering the dwelling. (*Official consent form is attached as EXHIBIT A*)
5. Inform the occupant of the particular areas to be inspected and that they have a right to refuse the inspection by reading the relevant sections of the form to the occupant. Also, inform the occupant an administrative search warrant to access the dwelling could issue **ONLY IF** it is found by a court of law that there is probable cause to believe conditions on the property exist that violate the law and that the occupant would be required to hold the property open for an inspection under the court's order.
6. If occupant decides to sign the consent form after being properly informed of the options, the inspector should have the occupant fill out the relevant sections, name, address and then sign the form. **HOUSING INSPECTORS:** Inform the occupant of their right to have a comprehensive inspection conducted and note the offer on the designated portion of the official consent form.

2.2 Non-English Speaking Occupants: For all occupant requested and non-occupant requested inspections, unless exempted in Section 4.0 below, staff shall, upon coming to the threshold or doorway of any dwelling, execute the following steps:

1. Ensure department I.D. card is visible to the person answering the door
2. State your name and purpose for being there

3. Determine if the person is an **occupant of the dwelling unit in which entry is sought, above the age of 18 and speaks English** or if anyone present in the household at the time of the inspection meets those three (3) requirements.
4. If no adult occupant at home during the time of the inspection speaks English then determine what language the person speaks.
5. If the ISD staff person present is authorized by the Department to speak the occupant's language then continue with Step 6 below, otherwise contact a manager via Nextel radio to obtain a translator. Once the translator is on scene or able to communicate with the person via Nextel radio or phone, continue with step 6 below
6. Inform the occupant, in the occupant's language, of the need to sign a consent form **BEFORE** entering the dwelling. Present the appropriate form written in the occupant's language to the occupant for completion by the occupant. *Official consent form is attached as EXHIBIT A*
7. Inform the occupant, in the occupant's language, the particular areas to be inspected and that the occupant has a right to refuse the inspection by having relevant sections of the consent form read to the occupant. Also, inform the occupant that **ONLY IF** it is found by a court of law that there is probable cause to believe conditions on the property exist that violate the law an administrative search warrant may issue. At that time, the occupant would be required to hold the property open for an inspection pursuant to the Court's order.
8. If the adult occupant decides to sign the consent form after being properly informed of the options, the inspector should have the occupant fill out the relevant sections, name, address and then sign the form. The translator, if on scene, should fill out the information on the reverse side of the form. If not on scene the inspector should fill out the information for the translator and obtain the translators signature upon returning to the office. If consent to entry is denied see Section 2.3 below.

2.3 Consent to Entry Denied by Occupant: An inspector refused entry shall immediately contact a manager and observe, from a legally justified position, conditions that would show there is probable cause to believe violations exist on the property and its interior necessitating access to further determine the condition of the dwelling and dwelling unit/s. Generally, any place held open to or accessible to the public. The manager should be able to guide any inspector on such indicia for probable cause based on the type of inspection.

2.3a Securing administrative search warrants: Any time it is determined that an administrative search warrant is needed, the inspector being denied access shall complete the affidavit template, made available to the inspector, and sign it. Another inspector based on the verbal reports of an inspector in the field may also complete the affidavit upon gaining such personal knowledge. The inspector shall complete the affidavit including as much information as possible based on observations made from a justified position. The inspector shall describe conditions showing probable cause that violations exist. Inspectors should also note the exterior conditions or other indicia. Commissioner's Bulletin 99-05 shall be the protocol followed for obtaining a warrant, unless amended by subsequent bulletin.

3.0 Securing Documentary Evidence through the use of photography and

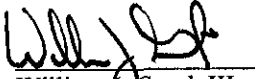
videotape: No ISD personnel shall take any photographs or videotape the interior of any dwelling unit without advance, specific, written consent of an adult occupant who speaks English or to whom a translator has explained the purpose of needing the additional consent. The consent must be recorded on the official department consent form attached as Exhibit A. **EXCEPTIONS TO SECTION 3.0:** See Section 4.0 # 4.

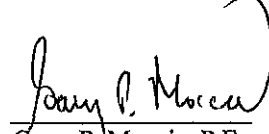
4.0 General Exceptions To Consent Requirements: ISD shall not be required to obtain consent for of the following situations that would otherwise be required under this bulletin for inspections performed in residential dwellings:

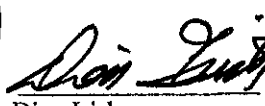
1. **780 CMR 115.2:** Rough, finals or any other inspections in a residential dwelling needed under an issued building permit will not require consent.
2. **Annual Certificate of Inspections:** For all residential use groups **EXCEPT** lodging houses or multi-dwelling unit where access to the interior of an individual dwelling unit is required to complete the inspection. .
3. **Certificate of Occupancy inspections.**
4. **Videotaping or photographing** exterior or common area conditions or interior dwelling unit conditions deemed unfit for human habitation or unsafe and dangerous.


All other inspections performed by ISD in residential dwellings will require consent and signed consent forms and translators UNLESS SPECIFICALLY SET OUT ABOVE.


Signed:


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